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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,969	12/15/2003	Thomas B. Brighton	47097-00066USC1	1306
28763	7590	05/15/2006	EXAMINER	
BAKER BOTTS, LLP			AFTERGUT, JEFF H	
30 ROCKEFELLER PLAZA			ART UNIT	PAPER NUMBER
NEW YORK, NY 10112-4498			1733	

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,969

Applicant(s)

BRIGHTON ET AL.

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 22-33 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 22-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2-20-04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claim 1, drawn to a mesh reinforced breathable film, classified in class 442, subclass 41.
 - II. Claims 22-33, drawn to a method of wrapping lumber, classified in class 156, subclass 184.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process of using the product such as a house wrap for protecting the exterior of a house from wind while still allowing for water vapor transmission of the water inside to the exterior.

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Lisa Chiarini (Reg. No. 50,932) on 5-9-06 a provisional election was made with traverse to prosecute the invention of Group II, claims 22-33. Affirmation of this election must be made by applicant in replying to this Office action. Claim 1 has been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 22-26, 28, 30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheth in view of either one of Ochiai or Pattenden or alternatively either one of Ochiai or Pattenden in view of Sheth.

Sheth taught it was known to provide a house wrap which included a mesh laminated to a breathable film of material. The mesh was added to the breathable film of the house wrap in order to render the film more structurally strong and provide increase strength (i.e. tear strength for example) to the film alone. The reference taught that the

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breathable film was preferably formed from linear low density polyethylene. Additionally the reference to Sheth suggested that the mesh material was formed from either linear low density polyethylene or high density polyethylene. The reference suggested that those skilled in the art would have laminated the film to the mesh material via a heat lamination operation. The reference suggested that the thickness of the breathable film was 4-6 mils (0.004-0.006 inches). The reference failed to teach that those skilled in the art at the time the invention was made would have incorporated the laminate as a breathable wrap for wrapping lumber in the packaging of the same.

The references to either one of Ochiai or Pattenden suggested that it was known to provide a wrap for lumber which included a woven mesh laminated to a plastic film. Ochiai suggested that the lumber wrap would have included strands of warp 1 and weft 2 flat yarns which were woven into a base sheet. The mesh was then laminated on one or opposite sides with a plastic film 3 which was then provided with air holes 5 therein. The reference employed the composite laminate as a covering (a wrap) for lumber. The reference to Pattenden suggested that it was known to form a woven fabric of tapes of oriented polyethylene and laminating (coating) a thin film of polyethylene thereto and employing the laminate as a lumber wrap and/or cover. Clearly, the references to Pattenden and Ochiai suggested that those skilled in the art at the time the invention was made would have known to employ a covering and/or wrap for lumber which included a laminate of a woven mesh material and a plastic film. Additionally, it should be noted that the reference to Pattenden suggested that the manner of lamination of the film to the woven mesh material included the use of extrusion lamination, see column 3,

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lines 42-53. One viewing the prior art as a whole would have understood that the mesh materials employed in either one of Ochiai and Pattenden were provided for tear strength purposes for the film. Additionally one viewing the prior art as a whole would have understood that the wrap of Sheth which was not only useful as a house wrap but also as a packaging material, would have been a suitable material for wrapping a stack of lumber (packaging the same) as the laminate therein had the necessary strength as well as being a laminate of a mesh and film material (which is what Pattenden and Ochiai employed as their wrapping materials). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the laminates of Sheth as a lumber wrap material in the packaging of a stack of lumber as taught was known with similar laminates by either one of Pattenden or Ochiai. Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the breathable film of Sheth in the laminate of Ochiai or Pattenden in order to ensure vapor transmission and prevent water damage (rot) to the lumber when using the laminate for wrapping about wood as taught by Ochiai or Pattenden.

With respect to claim 23, note that Sheth suggested the specified thickness for the breathable film. Regarding claim 24, note that Sheth suggested the use of linear low density polyethylene for the film materials. Regarding claims 25 and 30, note that the references all suggested that those skilled in the art would have employed a mesh material which was a woven mesh (in some instances) from fibers which were of a non-circular cross sectional shape. The applicant is advised that those skilled in the art would have determined through routine experimentation the specific width and depth of

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the strands used in the mesh in order to achieve adequate strength in the finished assembly. Such is taken as a result effective variable which would have been determined through routine experimentation. Regarding claims 28 and 32, note that the layers were clearly laminated together.

9. Claims 27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 8 further taken with Akno.

While the references as set forth above clearly suggested that the film was bonded to the mesh material in the process of making a laminate useful as a wrap for lumber, the references failed to teach that those skilled in the art would have incorporated an adhesive to join the mesh to the film material. However in formation of a bond between a mesh material and a film, it was notoriously well known to employ an adhesive material between a mesh and a film to bond the two together in the manufacture of a packaging material as taught by Akao. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize an adhesive material to join the mesh to the film in the process as set forth above in paragraph 8 for wrapping a lumber stack as the reference to Akao suggested that this was known to those skilled in the art at the time the invention was made and achieved the same desired result (a bond between the mesh and the film) as would have been attained with the heat bonding of the materials.

10. Claims 29 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 10 further taken with Bryniarski.

The references as set forth above in paragraph 8 suggested that the artisan would have formed the film on the mesh material via an extrusion operation to join the layers together. The references failed to expressly state that one skilled in the art would have joined the materials together via a coextrusion operation. However, one skilled in the art of forming mesh and film laminates was well aware that coextrusion would have been a suitable means for joining a mesh to a film in the manufacture of a packaging material as taught by Brynairski (see column 1, lines 13-15 for example). As the references as set forth above in paragraph 8 desired to attain a joint (a bond) between the mesh and the film therein, one skilled in the art would have understood that a suitable manner for forming the same would have included the use of coextrusion to join the materials together as evidenced by Bryniarski. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a coextrusion operation to join a film to a mesh material in the manufacture of a packaging material as suggested by Bryniarski in the process of making a film and mesh laminate as set forth above in paragraph 8 as the coextrusion operation would have provided a suitable manner for bonding the film to the mesh and extrusion was a known manner for assembly as suggested by the references as set forth above in paragraph 8.

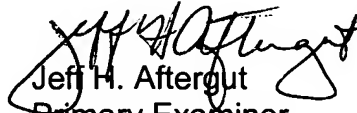
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
May 10, 2006